

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 681 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

RASUBHA BHURAJI CHAUHAN

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Appearance:

PUBLIC PROSECUTOR for Petitioner  
MR YS MANKAD for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 29/01/98

ORAL JUDGEMENT (Per Patel, J.)

The State being aggrieved by an order of acquittal recorded by learned Additional Sessions Judge, Special Court, Bhuj on 19.5.1997 in Sessions Case No. 61/92 has preferred this appeal.

2. The respondent accused was charge sheeted for offences punishable under sections 363, 366 and 376 read with section 114 of the Penal Code in the Court of Judicial Magistrate, First Class, Nakhartana, who committed the accused to the Court of sessions. Learned Additional Sessions Judge framed charge vide Exh.1. After recording the evidence, documentary as well as oral, the statement of accused came to be recorded under section 313 of the Penal Code, and after considering the submissions made by the learned counsel in the matter, learned Judge came to the conclusion that the State has not proved the case beyond reasonable doubt and benefit of doubt should be given to the accused. Learned Additional Sessions Judge, on appreciation of evidence has come to the conclusion that the Prosecutrix was not a minor, and there is no positive evidence that she was below 18 years of age. So far as the evidence is concerned, school record is also doubtful as it indicates 'approximate age', and, therefore, the same cannot be taken into consideration. It is also clear from the evidence that the girl was not willing to accompany the parents and she left the house of her own. Learned Additional Public Prosecutor submitted that as hymen was ruptured, conclusion can be drawn that there was sexual intercourse. Merely because of this, such an inference cannot be drawn for which learned Judge has discussed in paragraph 11. However, we should not forget that there is evidence of sexual intercourse on oath by victim; However, considering the age of the victim and the fact that she was moving on her own volition, it would not be proper for us to disagree with the reasonings given by the learned trial Judge.

3. Mr. Mankad, learned advocate appearing for the accused on notice and Mr. Dave, learned Additional Government Pleader for the appellant State were heard at length. Learned Additional Government Pleader could not point out any infirmity in the judgment.

4. This is an appeal against the order of acquittal. The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses;

(2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

5. Having perused the judgment and heard the learned advocate and the Additional Govt. Pleader, we are in agreement with the findings arrived at by the learned Judge. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" .... This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

6. In the result, this appeal fails and stands dismissed.

csm./ -----